United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Locals No. 597 and No. 354, AFL–CIO–CLC *and* Songer Corporation

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local No. 597, AFL–CIO–CLC *and* Songer Corporation. Cases 6–CB–8200 and 6–CB–8378

August 31, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On December 12, 1991, Administrative Law Judge Peter E. Donnelly issued the attached decision. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondents filed answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We conclude, as discussed below and in agreement with the judge, that the Respondents did not violate Section 8(b)(1)(B) of the Act[2] by filing internal union charges, and imposing and affirming fines, against a piping superintendent and 12 piping coordinators employed by Charging Party Songer on its U.S. Steel project in Gary, Indiana. These individuals were disciplined for violating certain provisions of the Respondent United Association's constitution (i.e., membership oath of obligation, travel card requirements, and prohibitions against working for employers who do not have collective-bargaining agreements with the United Association or an affiliated local union). Applying the Supreme Court's decision in *Royal Electric*,[3] the judge correctly found that the 8(b)(1)(B) complaint should be dismissed because (1) the Respondents did not have a current collective-bargaining relationship with Songer on the U.S. Steel project, and (2) the Respondents were not seeking to establish one.

[1] The judge's reference to Boilermakers Local 394 is corrected to Local 374.

[2] Sec. 8(b)(1)(B) prohibits unions from restraining or coercing employers in the employers' selection of their representatives for the purpose of collective bargaining or the adjustment of grievances.

[3] *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573, 589–590 (1987).

1. Absence of a current collective-bargaining relationship

The most recent collective-bargaining agreement between Songer and Respondent Local 597 expired in 1982, without renewal. Songer, along with about 13 other industrial contractors and about 14 International unions, including the UA, is a signatory to the National Industrial Maintenance Agreement (NMA). As discussed more fully below, however, the NMA is actually applied only on a project-by-project basis, upon agreement of both the contractor and the International union involved in that particular project, and only for the duration of that project. From 1982 until the start of the events in question in 1988, Local 597 regularly provided Songer with employees to work on various projects under the NMA. But beginning with the mid-1988 industrywide implementation of the Steel Mill Modification (Mod) to the NMA, Local 597 has refused to provide Songer with any employees to work on any projects under the NMA/Mod, including the instant July 1989–February 1990 U.S. Steel project. Accordingly, we find, in agreement with the judge, that there was no current collective-bargaining relationship between the Respondents and Songer on the U.S. Steel project.[4]

2. The Respondents were not seeking to establish a collective-bargaining relationship

The remaining question before us is whether the Respondents were seeking to establish a collective-bargaining relationship with Songer on the U.S. Steel project. In this context, ''seek[ing] to establish'' a collective-bargaining relationship is interpreted restrictively.[5] It means something more specific than a union's desire generally to represent employees.[6] For an 8(b)(1)(B) violation to occur in the absence of an *existing* collective-bargaining relationship, the evidence must show that the union has an actual intent, not a hypothetical or speculative one, to establish a collective-bargaining relationship with the employer in question.[7] The evidence must show that the union engaged

[4] Member Oviatt notes that Respondent Local 597 consistently refused to agree to the application of the NMA/Mod in its jurisdiction, and that there is no evidence that Respondent Local 354 sought to apply the NMA/Mod to the U.S. Steel project in question. Were it not for these aspects of the case, Member Oviatt would require additional, more focused evidence of Songer payments to PEN-WEL, Inc. (Local 354 Combined Funds), on behalf of the Local 354 members working as piping coordinators on the Songer project in question, as that evidence is relevant to the question of whether there was a collective-bargaining agreement between Songer and Local 354.

[5] *Carpenters District Council of Dayton (Concourse Construction)*, 296 NLRB 492, 493 (1989).

[6] *Plumbers Local 198 (Delta Mechanical)*, 292 NLRB 806, 809 (1989).

[7] *Concourse Construction*, supra, 296 NLRB at 493.

in specific overt acts, such as picketing or handbilling for recognition, soliciting authorization cards, or making statements to an employer indicating a concrete interest in representing the employer's employees, as opposed to a long-term objective of organizing employees generally.[8]

Applying the above standards to the facts discussed below, we find, consistent with the judge, that the record fails to establish that the Respondents, or any of them, engaged in any organizational efforts or other specific overt acts that would indicate that they had an actual intent to establish a collective-bargaining relationship with Songer. Instead, the weight of the evidence discussed below tends to belie the existence of such an effort or intent.

On April 19, 1988, shortly after the effective date of the Mod[9] to the NMA, Respondent Local 597 notified Songer as follows:

> Local Union #597 takes a very dim view of the steel industry requesting further sacrifices of its members through wage, shiftwork, and overtime concessions. In spite of our holding the line on wages and making concession [sic] through the various Project Agreements, we find our sacrifices have been in vain and have wrought nothing but requests for more concessions.
>
> Therefore, be advised and have it clearly understood that Local Union #597 has no intention of working under the auspices of the Steel Mill Modification to the National Industrial Maintenance Agreement.

According to the uncontradicted testimony of Robert Hoover, Songer's vice president for administration, Local 597's business manager, Francis X. McCartin, told Songer officials at a meeting on October 10, 1988, that he felt that Local 597 had done a responsible job of holding wages in line, that the Mod was unnecessary for Local 597 and its members, that the timing of the Mod's implementation was bad, that ''they were starting to become whole again,'' and that he felt that the steel industry was ''basically raping the working man.'' McCartin further told the Songer officials that he ''basically didn't care'' if work went to nonunion contractors, because ''that's what organizing was for.''[10]

Also, according to Hoover, McCartin told Songer officials at this meeting that if the UA wanted to ''force'' the NMA and Mod in Local 597's area, then the UA could assign it to the South Bend, Indiana Plumbers local. McCartin also told the Songer officials that any contractor who assigned Local 597's work to another craft would no longer have an agreement with Local 597, and that because Songer was using another craft (the Boilermakers) to perform Local 597's work, as of the end of the month (i.e., October 1988) Songer would no longer have any agreement with Local 597 and Local 597 would no longer accept fringe benefit payments from Songer for members of Local 597.

A week later, on October 17, Local 597 notified Songer as follows: ''Be advised that Pipefitter, Local Union 597, Chicago, Illinois, will not extend recognition or manpower throughout our jurisdiction to your firm.''

A week later, on October 24, Local 597 notified Songer as follows:

> At the meeting held on October 10, 1988, your Company again reiterated its position that there was no collective bargaining agreement in effect between your Company and Local Union 597. At that meeting we acquiesced to your position and agreed that effective October 28, 1988 there would be no collective bargaining agreement in effect between Songer Corporation and Local Union 597.

On October 31, Local 597 members stopped work on all Songer projects being performed under the NMA. Thereafter, the UA refused to approve Songer's requests for extension of the NMA and the Mod to any of Songer's projects in Local 597's geographical jurisdiction, including eventually the instant July 1989–February 1990 U.S. Steel project at Gary, Indiana.[11]

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[8] Id. at 494.

[9] The Mod provided, inter alia, that on steel mill maintenance, repair, replacememt, renovation, or modernization projects performed under the NMA, ''wage rates shall be 90% of those set forth in the current Labor Agreement of the affiliated Local Union where the work is to be performed together with 100% of the fringe benefits as recognized in [the NMA].''

[10] Under the NMA Policy Committee's ''International Participation Policy'' in effect at that time, if a union refused to extend the NMA to a particular project, ''thus forfeiting an opportunity to work under the program,'' the contractor involved was advised to assign the work to ''the next appropriate craft.'' In the instant case, for example, when Local 597 refused to provide pipefitters to Songer to work under the terms of the Mod, Songer was able to assign the work to employees represented by the Boilermakers, as ''the next appropriate craft.'' If, however, neither an appropriate craft nor the project general contractor could provide the manpower needed, the general contractor was ''then advised to award the work to any contractor, nonunion as a last resort.''

[11] On October 24, 1988, Songer filed a grievance with the NMA Policy Committee over the continued refusal of the UA, in concert with Local 597, to extend the NMA and the Mod to Songer projects in Local 597's geographical jurisdiction. The NMA provides:

> (Para. 21) This Agreement shall have application only to work location[s] agreed upon between the Company and the [UA].
>
> . . . .
>
> (Para. 64) Extensions for this Agreement shall be on a location-to-location basis and shall be sought for each location.

Songer contended that the UA was in violation of the NMA by insisting on the right to extend the NMA and the Mod on a project-by-project basis, rather than on a location-by-location basis as expressly permitted in the NMA.

On June 27, 1989, the NMA Policy Committee held that although the language of the NMA provides for extending the agreement on a location-by-location basis, different international unions had ac-

The internal union discipline imposed on Songer's piping superintendent and coordinators for working on this Gary project is the basis for the 8(b)(1)(B) allegations here.

Under all the circumstances, as set forth above and by the judge, we find, in agreement with the judge, that the record fails to establish that the Respondents were seeking to establish a collective-bargaining relationship with Songer on the U.S. Steel project. The Respondents did not picket, distribute handbills, make statements of recognitional intent, solicit authorization cards, or otherwise demonstrate any interest in representing employees on the project. On the contrary Respondent Local 597 disclaimed any interest in representing Songer employees working under the auspices of the NMA/Mod, including on the U.S. Steel project, and specifically expressed its indifference to whether Songer assigned the work in question to nonunion employees.

Arguing that the instant case is ''very similar'' to *Limbach Co.*,[12] the General Counsel contends that Respondent Local 597's disclaimer should be dismissed as a sham. We disagree and find *Limbach* distinguishable.[13]

In that case, the Board held, inter alia, that the respondents violated Section 8(b)(4)(ii)(B) of the Act by disclaiming interest in continuing to represent the employer's employees, with the unlawful object of forcing the employer to pressure a separate sister company to recognize the respondents. The Board found that the unions' disclaimer of interest was not only for an unlawful secondary objective but was also not genuine. The International union's president there had indicated that the unions' disclaimer was motivated at least in part by their desire to force the unionization of the employer's sister company, and that the unions would resume their collective-bargaining relationship with the employer if the employer's sister company would recognize the unions as the representative of its employees. Thus, the Board stated:

> [T]he Respondents' disclaimer is like many other actions, such as striking and picketing, which may be perfectly lawful if taken without a secondary objective, but which are condemned by the Act if done for an unlawful secondary purpose. [Id. at 315, footnote omitted.]

In the instant case, unlike in *Limbach*, we discern no unlawful objective underlying the Respondents' disclaimer of interest in representing Songer's employees under the NMA/Mod within Local 597's geographical jurisdiction. The Respondents simply objected to the concessionary wage and benefit terms of the Mod and declined to have any collective-bargaining relationship with an employer like Songer that insisted on applying the Mod. This does not reflect a secondary objective, and the General Counsel does not contend that it represented a bad-faith refusal to apply a binding collective-bargaining agreement, in violation of Section 8(b)(3). The Respondents' position is no different in legal effect from a refusal by a construction industry union to refer employees from its hiring hall to employers who decline to pay union scale. In short, just as Songer exercised its lawful prerogative not to hire Local 597-represented employees at the Gary steel mill project and pay them at the rates desired by Local 597, so the Respondents simply exercised their lawful prerogative not to maintain a collective-bargaining relationship with Songer at that project.

Nor do we find the disclaimer a ''sham'' simply because Local 597 might be interested in representing employees working for Songer if more favorable economic terms were available. As noted above, under *Royal Electric* and subsequent cases applying its holding, evidence of an immediate interest in organizing or representation is necessary in order to establish the collective-bargaining relationship element of an allegation of unlawful discipline of 8(b)(1)(B) representatives. Speculations about the Respondents' likely conduct towards Songer under different circumstances in the future do not suffice to satisfy the *Royal Electric* requirement that there be a current recognitional objective.

Accordingly, for all the above reasons, we conclude that the Respondents' filing of internal union charges, and imposing and affirming fines, against Songer's piping superintendent and piping coordinators did not violate Section 8(b)(1)(B) of the Act as alleged.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Clifford E. Spungen, Esq., for the General Counsel.
Collins P. Whitfield, Esq., of Chicago, Illinois, for Respondent Local 597.
Robert Matisoff, Esq. and *Robert J. Henry, Esq.*, for Respondents United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Local No. 354.
Jeffrey E. Beeson, Esq., of Chicago, Illinois, for the Charging Party.

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ceptably developed various practices limiting or modifying this location-by-location extension language, and the UA was not prohibited from extending the agreement on a project-by-project basis, provided that it clearly communicated such a practice to employers in advance and thereafter consistently followed it.

[12] *Sheet Metal Workers Local 80 (Limbach Co.)*, 305 NLRB 312 (1991).

[13] Member Devaney finds it unnecessary to pass on the applicability of the Board's *Limbach* decision to this case because, for the reasons stated in his dissent in that case, he believes *Limbach* was wrongly decided.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On charges filed by Songer Corporation (Charging Party, Employer, or Songer) the Regional Director issued a complaint on November 8, 1990, and subsequently a consolidated amended complaint on April 1, 1991, alleging that Respondent, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and its Locals Nos. 597 and 354, AFL–CIO, CLC (respectively UA, Local 597, and Local 354), violated Section 8(b)(1)(B) of the Act by filing internal union charges, fining, and affirming those fines against 13 supervisor-members employed by Songer. Answers were timely filed by Respondents. A hearing was held on July 9, 10, and 11 and August 5, 1991. Briefs have been timely filed by all parties which have been duly considered.

I. EMPLOYER

The Employer is a Pennsylvania corporation engaged as a contractor in the industry. During the 12-month period ending May 31, 1990, the Employer, in the course and conduct of its business operations, performed services valued in excess of $50,000 in States other than the Commonwealth of Pennsylvania and purchased and received at its Pennsylvania facilities products valued in excess of $50,000 directly from points located outside the Commonwealth of Pennsylvania. The complaint alleges, the answer admits, and I find, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. LABOR ORGANIZATIONS

The complaint alleges, the answer admits, and I find that the Respondents are all labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Songer, a construction contractor, is primarily involved in the repair, maintenance, and modernization of facilities in the steel industry. Songer is a union contractor, i.e., all of its projects are manned by union labor. Songer is also a member of the National Maintenance Agreement Policy Committee Inc. (Committee), an organization comprised of 14 International Unions, including the UA, and 14 industrial contractors. The Committee developed what is known as the National Industrial Maintenance Agreement (NMA) establishing common terms and conditions of employment, including pay rates. All 14 building trades International Unions are signatories, including the UA. The Steel Mill Modification (Mod) to the NMA was adopted by the Committee's labor section, including the UA, in early 1988.[1] The Mod was an effort to make the NMA more attractive to steel mill owners so as to retain the construction work in the steel industry for contractors using union crafts. The Mod had the effect of substituting the provisions of the Mod for provisions in local contracts on steel industry projects. The key provision, and the subject of controversy within the UA, was a provision in the Mod that wage rates for construction work on steel mill projects ''shall be 90% of those set forth in the current Labor Agreement of the affiliated Local Union where the work is to be performed.'' The Mod also provided that disputes arising under the Mod would be resolved by the Committee.

In July 1989,[2] Songer contracted with U.S. Steel for the repair and renovation of blast furnaces Nos. 13 and 4 at Gary, Indiana. The contract contemplated a shutdown of No. 13 for 12 days and intense around-the-clock work by Songer so as to minimize the downtime of that large capacity furnace. The work on No. 4 was to start sometime later and be accomplished on a normal schedule.

Under the terms of Songer's bid for the work, the work was required to be performed under the terms of the NMA-Mod. Procedures under the NMA-Mod provide that before the NMA-Mod can be extended to a project, the contractor must request from the International Union an extension of the NMA-Mod to that project. Songer made this request by letter to the UA dated June 29. The request was denied by the UA by letter dated July 19, despite the fact that it was a signatory to the NMA-Mod. The apparent reason for the UA denying the request was the fact that UA Local 597, within whose geographical jurisdiction the work was to be performed, opposed the Mod, notably because of the 10-percent wage reduction provided therein. Local 597 had already indicated that it would not provide manpower for steel mill projects under the NMA-Mod. Thus Local 597 had previously made clear its opposition by letter dated April 19, 1988, from Business Manager Francis X. McCartin to Songer wherein McCartin recites the financial sacrifices previously made by members of Local 597 and concludes:

> With these facts set forth, Local Union #597 takes a very dim view of the steel industry requesting further sacrifices of its members through wage, shiftwork, and overtime concessions. In spite of our holding the line on wages and making concession through the various Project Agreements, we find our sacrifices have been in vain and have wrought nothing but requests for more concessions.
>
> Therefore, be advised and have it clearly understood that Local Union #597 has no intention of working under the auspices of the Steel Mill Modification to the National Industrial Maintenance Agreement.

This created a problem for Songer. It was obliged under its bid and the NMA-Mod to use UA pipefitters but Local 597 was refusing to provide them.[3] How, then, was Songer to man the job with pipefitters at Gary? This problem was brought to the attention of the Committee and it was the de-

[1] The NMA incorporating the Mod for steel mill work is referred to herein as NMA-Mod.

[2] All dates refer to 1989 unless otherwise indicated.

[3] In years past, Songer and Local 597 had been signatories to various collective-bargaining agreements, but the last of these expired in 1982. Since that time, there has been no formal collective-bargaining relationship between Songer and Local 597 although until the time of the present dispute in 1988, Local 597 had provided members to work for Songer within its jurisdiction, including work under the NMA, for U.S. Steel work at Gary, Indiana. Songer also had made the appropriate fringe benefits payments on behalf of Local 597.

cision of the Committee that the work be done by the closest allied craft under the Committee's International Participation policy. This decision was reached as set out by memo dated September 15, from Independent Secretary of the Committee, Noel C. Brock, and it reads in pertinent part:

> The following constitutes an official action of the National Maintenance Agreements Policy Committee:
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> Bulletin No. I - 9-89-1 - National Maintenance Agreement
>
> Subject: Article I - Recognition
>
> *Non-Participation in the National Maintenance Agreement Program*
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> The Committee was requested to review and clarify its policy for instances where a non-signatory Union, or Unions, refuse to extend the National Maintenance Agreement to specific projects.
>
> CONCLUSION
>
> The Committee outlined the policy that has been followed for the past sixteen (16) years under the [NMA] Program:
>
> a. The affected local is requested to work under the same terms and conditions as other crafts working under the terms of the National Maintenance Agreements.
>
> b. When the local refuses to cover the work under the agreement, the contractor is advised to assign the work to the next appropriate craft.

So it came to pass that ''next appropriate craft'' was Boilermakers from Local 394, Boilermakers International Union. Members of Local 394 were employed to do the work that normally would have been done by members of Local 597 of the UA at the No. 13 blast furnace project.[4]

Songer also employed and assigned to the No. 13 blast furnace job 12 individuals designated as piping coordinators, and 2 designated as piping superintendents to supervise the pipefitter work being performed by boilermakers. These individuals were members of Local Unions 354 and 449 of the UA.[5]

The piping coordinators were assigned various defined areas of work responsibility during the No. 13 blast furnace renovation. Once the work began, the record discloses that the piping coordinators had full authority and overall responsibility for the entire project in their assigned areas. They reported to a piping supervisor who, in turn, was responsible to the general piping superintendent. Songer employed six piping coordinators on the day shift and five on the night shift, along with one piping superintendent on each shift. Both the piping coordinators and the piping superintendents had the authority to discipline, assign, and transfer employees. They had the authority to adjust work grievances and often did so although some worksite problems were resolved by lower level general foremen or foremen under their supervision. The piping coordinators normally did not work but spent their time directing the activities of the work force performing the pipefitter work.

On the completion of the work at blast furnace No. 13, the piping coordinators and Piping Superintendent Joseph Kilkeary moved to blast furnace No. 4. While working there, internal union charges were filed on September 5, by Local 597 against 13 individuals, 12 piping coordinators, and piping Superintendent Kilkeary, charging them with violating the UA constitution by failing to deposit travel cards with Local 597 when they began working within the geographical jurisdiction of Local 597 at Gary.[6] A hearing was scheduled on these charges in Local 597's offices in Chicago, Illinois, but none of those charged appeared. On October 3, each of the 13 individuals were fined $500. These fines were appealed to the UA on October 18. It was not until July 10, 1990, that the 13 individuals were advised that their appeals would be heard on August 8, 1990. Over their request for a postponement, a hearing was held on August 8, 1990; a report thereon issued on September 27, 1990. Their appeal was officially denied by the UA and their fines approved on January 7, 1991.

Other charges, alleging that the same supervisor-members violated their UA pledge by working for a nonunion contractor on work within UA's jurisdiction[7] were filed by Local 597 on September 11 and referred to the home Locals of the supervisor-members, i.e., Locals 354 and 449. Local 354 processed the charges relating to their members, held a hearing on October 27, 1989, at which each of its member-supervisors were found guilty and each fined $5000. Those fines were appealed to the UA. A hearing thereon was held and the fines were upheld by the UA's general executive Board, and the members were so advised by letter dated May 9, 1990.

Local 449 refused to accept the charges, whereupon the UA appointed a hearing officer and the members were tried and found guilty of the charges and fined $5000 each by the UA.

B. *Analysis and Recommendations*

General Counsel and Charging Party contend that by filing internal union charges and affirming those fines against supervisor-members employed by Songer, Respondents have violated Section 8(b)(1)(B) of the Act.

It is undisputed that the charges were filed and supervisor-members fined as alleged in the complaint and described above. The supervisor-members were fined for two alleged infractions, first, for violating the UA constitution by failing to deposit their travel cards with Local 597 when they began working within the Local 597's geographical jurisdiction and, second, by working for an employer who was not a party to a UA contract. The issue is whether or not Respondents violated Section 8(b)(1)(B) by fining the supervisor-members.

Section 8(b)(1)(B) of the Act reads:

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[4] Some types of work were also performed by Millwright, Iron Worker, and Laborer crafts signatories to the NMA-Mod agreement.

[5] More piping coordinators were employed on the blast furnace No. 13 project than normal because of the short 12-day downtime available to complete the job. In addition, it appears that the job was complex and that the skill level of the Boilermakers performing the pipefitter work was lower and closer supervision was desirable.

[6] The UA constitution provides that members leaving the geographical jurisdiction of their own Locals to work within the geographical jurisdiction of other UA Locals must deposit travel cards with that Local to show that they are UA members in good standing.

[7] Secs. 159 and 200(a) and (b) of the UA constitution.

> (b) It shall be an unfair labor practice for a labor organization or its agents—
>
> (1) to restrain or coerce . . . . (B) an *employer* in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

The legislative history leading to the enactment of this section discloses that it was written to protect employers by prohibiting unions from forcing on employers, through coercive action, supervisors who retained an allegiance to the Union, thereby creating a conflict of loyalties in those supervisors from which the union could profit. Such a result is not farfetched. Where the union is allowed to dictate, through coercion, the selection of supervisors, such supervisors would be faced with conflicted loyalties to the employer. In the instant case, argues the General Counsel, the supervisor-members would retain such an allegiance to Local 597 while at the same time exercising supervisory responsibilities for Songer.

The Board and courts over the years have wrestled with the language of Section 8(b)(1)(B) until the Supreme Court spoke in the *Royal Electric* case.[8] In that case, the Court held: first, that Section 8(b)(1)(B) prohibits coercion by union discipline of a supervisor-member only when that supervisor-member is engaged in collective bargaining or grievance adjustment activity; second, that the phrase ''representatives for the purposes of collective bargaining or the adjustment of grievances'' meant not all statutory 2(11) supervisors, but only those performing the 8(b)(1)(B) duties of ''collective bargaining or the adjustment of grievances''; third, the Supreme Court held that in order for the constraints of Section 8(b)(1)(B) to apply, it is necessary for there to be a collective-bargaining relationship between the employer or the union or that the union be seeking such a collective-bargaining relationship. With respect to this issue, the Supreme Court held, in *Royal Electric*:

> we find that the absence of a collective-bargaining relationship between the union and the employer, like the absence of [Sec.] 8(b)(1)(B) responsibilities in a disciplined supervisor-member, makes the possibility that the Union's discipline of Schoux and Choate will coerce Royal and Nutter too attenuated to form the basis of an unfair labor practice charge.

The Court went on to set out its rationale, stating,

> First, the discipline will not affect the manner in which employer-representatives perform grievance-adjustment or collective-bargaining tasks. When a union has a collective-bargaining relationship with an employer, it may have an incentive to affect its supervisor-member's handling of grievance-adjustment and collective-bargaining chores. Moreover, union discipline of employer-representatives for behavior that occurs during performance of [Sec.] 8(b(1)(B) duties might adversely affect the future performance of those duties. . . . . But when a union has no collective bargaining relationship with an employer, and does not seek to establish one, both the incentive to affect a supervisor's performance *and* the possibility that an adverse effect will occur vanish. The union has nothing to gain by interference with the supervisor-member's loyalty during grievance adjustment or collective bargaining; nor can the employer-representative reasonably expect that he or she will be subject to discipline for the *manner* in which those duties are performed in the future. In other words, the assumption underpinning Florida Power and ABC—that an adverse effect can occur simply by virtue of the fact that an employer-representative is disciplined for behavior that occurs during performance of [Sec.]8(b)(1)(B) tasks—is not applicable when the employer has no continuing relationship with the Union.

The General Counsel takes the position that since the UA is a party to the NMA-Mod, therefore Local 597, like all UA locals, is a subordinate organization and also bound to the NMA-Mod. However, this is not the case since the Mod itself contemplates the possibility that the International Union signatories, including the UA, may reject any extension of the Mod to any project. Provisions of the Mod itself provide that contractors shall request permission of the International for application of the Mod to a project. Obviously, therefore, the possibility exists that a signatory International Union could reject the application of the Mod when requested by a particular contractor for a particular project. When this happens, the local craft union within whose geographical jurisdiction the project falls, has no contractual obligation under the NMA Mod to provide manpower for the project. Essentially, participation in the Mod by International Unions, such as the UA, was optional.

This happened in the instant case, the UA rejected Songer's request to extend the Mod to work at the U.S. Steel project at Gary, Indiana. In these circumstances, even assuming that the UA had the authority to bind Local 597 to the NMA-Mod, it also had the option of denying Songer's request, in which case Local 597 would not be bound by the NMA-Mod and there would be no collective-bargaining relationship between Local 597 and Songer. The applicable procedures under the NMA-Mod contemplate the denial of such requests by International Unions, by providing, inter alia, for the work in question to be performed by the next appropriate craft. In this case, the bulk of the work pursuant to this policy was assigned by Songer to the boilermakers, whose Local Union No. 394 manned the job.

Nor does the fact that Local 597 had provided men to Songer under the NMA without the Mod affect this conclusion. Merely furnishing men for work performed by Songer within the geographical jurisdiction of Local 597 does not establish a collective-bargaining relationship for the purposes of the instant case.

The weakness in the General Counsel's position is further illustrated by the fact that none of the work force performing the pipefitter work were union pipefitters; they were mostly boilermakers. This being the case, there would be nothing for Local 597 or the UA to gain by attempting to influence or interfere with the supervisor-members' allegiance to Songer in the collective-bargaining or grievance adjustment processes since none of those supervised would be members of Local 597. Without any pipefitters on the job, Local 597 would have no incentive to pressure UA supervisor-members to adopt prounion positions as to grievances or collective bargaining. See *Royal Electric*, supra.

[8] *NLRB v. Electrical Workers Local 340 (Royal Electric)*, 481 U.S. 573 (1987).

Nor do the facts establish that Local 597 was seeking to establish any collective-bargaining relationship with Songer. The last labor agreement between Songer and 597 expired in 1982. There have been no subsequent labor agreements nor does the evidence show any organizational effort on the part of Local 597 to seek recognition or a collective-bargaining relationship. What Local 597 opposes is the Mod. It would be reasonable to conclude that Local 597 wanted the Mod and the concomitant 10-percent wage reduction contained therein eliminated from the NMA-Mod. Therefore, the UA refused to extend the Mod and Local 597 refused to man the Songer job at Gary. The supervisor-members were fined in an effort to pressure Songer to eliminate the Mod. Assuming this had been accomplished, it is not unreasonable to assume that Local 597 would have once again referred pipefitters to man Songer steel mill jobs under the NMA without the Mod within its geographical jurisdiction. It is likely, in that event, that a collective-bargaining relationship would resume between Songer and Local 597. However, this would be the result, rather than the object, of the fines imposed herein. In other words, even assuming, as the evidence suggests, that the fines were imposed for the purpose of bringing pressure to revoke the Mod, this would not bring the fines within the concept of coercion necessary to constitute an 8(b)(1)(B) violation. Whether the revocation of the Mod is a worthy objective or not, intraunion fines designed to promote such a result do not constitute 8(b)(1)(B) violations.

In summary, I conclude that the actions of Respondents in filing charges against and fining supervisor-members[9] employed by Songer did not violate Section 8(b)(1)(B) of the Act because, when the UA refused to extend the NMA-Mod to Songer's U.S. Steel Gary project, as it was privileged to do, there was no collective-bargaining relationship with the Respondents for that project nor does the record disclose any effort to seek such a collective-bargaining relationship.

CONCLUSION OF LAW

Respondent has not engaged in any conduct violative of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[10]

ORDER

The complaint is dismissed in its entirety.

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[9] In these circumstances, it is unnecessary to decide whether the 13 members of Locals 354 and 449 were supervisors performing 8(b)(1)(B) duties as set out in *Royal Electric*, since, even assuming that they are, there would be no 8(b)(1)(B) violation for the reasons set out above.

[10] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.